

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER

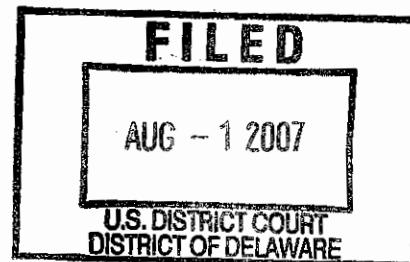
Plaintiff,

v.

DR. MAGGIE BAILEY CMS,  
and FIRST CORRECTIONAL  
MEDICAL, INC.,

Defendants.

C.A. No. 06-349 GMS



PLAINTIFF'S PETITION AGAINST DEFENDANT  
FIRST CORRECTIONAL MEDICAL INC, TO  
PROVE THEIR LIABLE FOR EMPLOYER, DR.  
MAGGIE BAILEY NEGLIGENCE, FOR NOT  
MONIRING PLAINTIFF WHOM WAS TAKEN  
IRON PILLS TWICE A DAY, THAT LED  
TO BEING OVERMEDICATED, WHICH  
CAUSED PLAINTIFF TO HAVE ACID REFLUX  
DISEASE.

TO PROVE SUPERVISORY LIABILITY:

CIVIL RIGHTS 78-1336

TO impose supervisory liability UNDER §1983 on government Contractor for actions of its employees, Plaintiff must show that there was specific Supervisory practice or procedure that contractor failed to employ, and that: (1) existing custom and practice without specific practice or procedure created unreasonable risk of Constitutional violation, (2) Contractor was aware that this unreasonable risk existed, (3) Contractor was indifferent to that risk, and (4) Contractor's failure to follow that

Plaintiff, does not believe that DR. Maggie Bailey improper conduct of duty was done intentionally. But through her carelessness and ignorance but became Negligent of unskill performance of duties resulting from such person's Proffessional relationship with Patients (such as Plaintiff) in his present complaint.

NEGLIGENCE, as negligent-neglect of business, of health, or of economy. 10 A.2d 203, 205.

Failure to exercise that degree of care which a person of ordinary prudence (a reasonable man [person] would exercise under the same circumstances. The term refers to conduct which falls below the standard established by law for the Protection of others against unreasonable risk of harm.

ORDINARY NEGLIGENCE, which is failure to use ordinary care.

Plaintiff (states) that Dr. Maggie Bailey conduct falls below the standard, at the time of recieving and taking the iron medication (pills) twice a day, for (6) months, for a low Hemagloben low blood count. He should have been monitored by Dr. Maggie Bailey or Medical staff to see if blood had risen to where its normal, by taken one pill a day, again to where its a normal blood count, off medication. Plaintiff was told by Head Nurse Brenda Horawitz that he's been overmedicated with iron pills, which led to your present condition of having acid reflux disease. The regular R.N.s did not know why I was going through My symptoms of erosion backling up in my esophagus , or the type of medication I was taking upon their delivering and would not pull my medical record, Yes, Dr. Maggie Bailey is Negligence upon her improper conduct.

Practice or Procedure resulted in Plaintiff's injury. U.S.C.A.  
Const. Amend. 8; 42 U.S.C.A. § 1983.

**VICARIOUS LIABILITY** - the imputation of liability upon one person for the actions of another. In tort law, if an employee, EE, while in the scope of his employment for employer, ER, drives a delivery truck, and hits and injures P crossing the street, ER will be vicariously liable, under the doctrine of respondeat superior, for injuries sustained by P. 110 N.W. 2d 29, 34.

**SCOPE OF EMPLOYMENT** - the range of activities encompassed by one's employment, refers to those acts done while performing one's job duties; (the phrase... (was) adopted by the courts for the purpose of determining a master's liability for the acts of his servants, [and] has 'no fixed legal or technical meaning,' ..... 'the ultimate question is whether it is just that the loss resulting from the servant's acts should be considered one of the normal risks of the business in which the servant is employed which that business should bear.' 145 So. 743, 745. The phrase is "a convenient means of defining those tortious acts of the servant not ordered by the master for which the policy of law imposes liability upon the master." 181 A. 2d 565, 569. The master (usually, the employer) is vicariously liable only for those torts of the servant (employee) which are committed within the scope of his or her employment. See respondeat Superior. See also Employers' Liability Acts; Workers Compensation Acts.

**RESPONDEAT SUPERIOR** - This doctrine is invoked when there is a master and servant relationship between two parties. The "respondeat superior" doctrine stands for the proposition that when an employer dubbed "master" is acting through the facility of an employee or agent, dubbed "servant," and tort liability is incurred during

the course of this agency due to some fault of the agent, then the employer or master must accept the responsibility. Implicit in this is the common law notion that a duty rests upon every person to conduct his or her affairs so as not to injure another, whether or not in managing the affairs he or she employs agents or servants. See 143 P. 2d 554, 556. This doctrine is civil in its application. See 9 N.W. 2d 518, 521. See scope of employment. Compare Vicarious liability.

### EMPLOYERS' LIABILITY ACTS -

Statutes specifying the extent to which employers shall be liable to make compensation for injuries sustained by their employees in the course of employment. JUR. 2d, Master and Servant & 341, 353. Unlike Worker's Compensation laws, which have replaced these acts in many states, the employer is made liable only for injuries resulting from his breach of a duty owed the employee — 818, 880. Like Worker's compensation, however, many of these acts do abolish the use by the employer of the common law defenses of contributory negligence, assumption of the risk, and the fellow servant rule. See 53 Am. Jur. 2d 354. See also Federal Employer's Liability Acts.

See Carter v. City of Philadelphia, 181 F. 3d 339

357-58 (3d Cir. 1999)

CMS can be held liable for charging Plaintiff for sick call visits and medication, after they taken over the contract in August '05.  
(3)

To impose supervisory liability on FCM for the actions of its employees, [Plaintiff] must show that there was a specific supervisory practice or procedure that [FCM] failed to employ [.] Sample v. Dietks, 885 F.2d 1099, 1118 (3rd Cir. 1989), and that (1) the existing custom and practice without that specific practice or procedure created an unreasonable risk [of Eighth Amendment injury], (2) [FCM] was aware that this unreasonable risk existed, (3) [FCM] was indifferent to that risk," and (4) FCM's failure to follow that practice or procedure resulted in Plaintiff's Miller's injury.

While Plaintiff's complaint does not explicitly set forth such a policy or the existing custom and practice, to require him, a pro se inmate plaintiff, to do so and to attribute such to FCM, and show that FCM was indifferent to the risk created, would be "unduly harsh" at this stage. See Carter v. City of Philadelphia, 181 F.3d 339, 357-58 (3d Cir. 1999) holding that inmate discovery exactly what training policies were in place and how they were adopted.) In Plaintiff Miller's complaint, Miller show true facts that he was overmedicated with iron medication [pills] taken twice a day for (6) months, from January to June 04, without ever being monitored by either Physician Dr. Maggie Bailey or Medical staff, that led to his present condition of having acid reflux disease. Which Plaintiff takes medication daily for this disease.

These true facts are sufficient to permit further development of the record. See Ward v. Taylor, NO. 04-1391 2006 WL 839402, at \*6 (D. Del. March 30, 2006).

WHEREFORE, PLAINTIFF respectfully request entry of judgement in his favor and against First Correctional Medical (FCM) to liquidate a claim, a judicial contest, and a demand for jury trial.

Date: July 26, 2007

THOMAS R. MILLER  
Thomas R. Miller  
1181 Paddock Rd  
DCC  
S Myrna De 19977

I, Thomas R Miller, hereby certify that on this date, I served on the parties below in the manner indicated, copies of the Plaintiff An Affidavit of Merit pursuant to Del. Code Ann. Tit 18 § 6853 TO Dr. Maggie Baileys medical malpractice for being negligent, for overmedicating, for Plaintiff without being monitored that led to having acid reflux Disease which is serious without medication.

TO: Honorable Gregory Sheet  
United States District Court  
844 N. King Street, Lock box 19  
Wilmington, DE 19801-3570

TO: Office of the Clerk  
United States District Court  
844 N. King Street Lock box 18  
Wilmington, Delaware 19801-3570

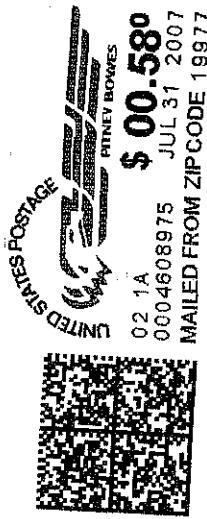
TO: First Medical Correctional Inc  
~~6861 North~~ or  
205 W. Giaconda way STE 115  
Tucson AZ 85704-4350

TO: Balick & Balick LLC  
711 North King Street  
Wilmington, DE 19801

Thomas R Miller  
Thomas R Miller

DATE: July 26, 2007

I/M Thomas R. Miller  
SBI# 144108 UNIT 22-A-U-5  
DELAWARE CORRECTIONAL CENTER  
1181 PADDOCK ROAD  
SMYRNA, DELAWARE 19977



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0004608975 JUL 31 2007  
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XTC  
R.A.  
TO: Office of the Clerk  
United States District Court  
844 N. King Street Lockbox 18  
Wilmington DE  
19801-3520  
*Legal Mail*

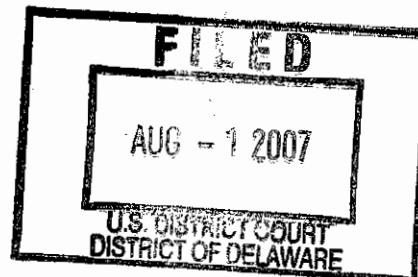
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THOMAS R. MILLER  
Plaintiff

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v.

DR. MAGGIE BAILEY  
CMS, FIRST CORRECTIONAL  
MEDICAL, INC,  
Defendants.)



AN AFFIDAVIT OF MERIT BD scanned  
PURSUANT TO Del Code Ann.  
tit. 18. § 6853. TO DR. MAGGIE  
BAILEY'S MEDICAL MALPRACTICE  
FOR BEING NEGLIGENT, FOR  
OVER MEDICATING, PLAINTIFF  
WITHOUT BEING MONITORED  
THAT LED TO HAVING ACID  
REFLUX DISEASE, WHICH  
IS SERIOUS WITHOUT MED-  
-ICATION.

## MALPRACTICE

a professional's improper or immoral conduct in the performance of duties, done either intentionally or through carelessness or ignorance. 134 S.E. 527; 234 N.Y.S. 52, 53. The term is commonly applied to a physician, surgeon, dentist, lawyer, or public officer to denote the negligent or unskilled performance of duties resulting from such person's professional relationship with patients or clients. 72 F. Supp. 394, 399; 236 N.Y.S. 641.

SWORN ON THIS DATE July 26, 2007, FROM  
PLAINTIFF Thomas R Miller.

Public Notary

Osman Sammander

OSMAN SAMMANDER  
Notary Public  
State of Delaware  
My Comm. Expires June 14 2008

Thomas R. Miller  
1181 Paddock Rd  
D.C.C  
Smyrna, DE 19977